

the Revenue Department to the Excise Department? Those are exigencies of service! Is there any honest man in this House who ever says that service in the Excise Department will increase the learning and erudition of any man in the judiciary? If an inefficient man is thrown over the head of an efficient man, will he not feel discontented? I ask you, to take first the 3 members in the Munsiffs' cadre, how long have they been in service, how many men have gone over their heads? Such a thing would not have occurred if the High Court was given the privilege and the right to exercise their discretion. I ask the Advocate-General whether this is the land of Utopia or practical politics. I ask those Hon'ble friends who opposed my motion on the ground of difficulty in the Cochin State for administering communal justice. I ask them, has any communal justice been kept in mind at all. There is an English game called "Snakes and Ladders". Appointments to the judiciary and careers in the judiciary are like that of playing at snakes and ladders. At one time you find a High Court Judge going down to the Excise Commissioner's place and at another you find a member of the Revenue Department going on to the High Court. Are these not practical politics to the Advocate-General? Even an officer who has been found to be most unsatisfactory say for example a Protector of the Depressed Classes, is found fit to be in the judiciary. Are these practical politics? Ultimately he was found inefficient in that department also. Are these practical politics, judicial officers being taken as recruiting officers? What wonderful erudition in law would you get by being a recruiting officer? And when these people come and administer justice between man and man and give wonderful judgments, what do the people say? Let them be above suspicion like Caesar's wife, and never put forth your argument that if the power of appointment is given to the High Court they will bring themselves to ridicule. Already, the judiciary are in ridicule. Remember that it is a sound principle that not only should justice be done but that it should appear that justice is done. If you promote a leader of the Bar to the judiciary, the feeling in the minds of the people will be that they will get justice, since he is a learned man. If you take an experienced man and appoint him as District Munsiff, the feeling comes "here is an experienced Munsiff". If a Police Commissioner is appointed as High Court Judge, then also there will be that feeling that he was only a Police Commissioner and therefore he ought not to have been brought there. Adopting that very same argument, I submit, Sir, that this motion has substance in it. My object was only to discuss the motion. Therefore I beg leave of the House to withdraw the motion.

Motion, by leave, withdrawn

CUT MOTION No. 67

Retired judicial officers practising in the courts

Mr. V. J. Mathai (Planters): I rise to move to reduce the allotment of Rs. 4,030 for Law and Justice-Establishment by Re. 1. The object is to prohibit the retired judicial officers except the Advocate-General and Government Pleader from practising in the Courts of the State. Sir, this question was discussed on the floor of this House, and I thought there was unanimity when it came here before. Now that this is practically a new House and since the Government have not taken any steps to prohibit this evil which according to me, is an evil, I would request the attention of this House to discuss this motion. Today, in our courts, retired Judges of the High Court and several retired judicial officers are practising as advocates. The chief evil is this. When the judges are on the Bench, they comment upon the actions of the judicial officers individually. If they have got the power of recommending anybody for appointment or promotion, then naturally those officers who were under them are obliged to the officers above them for their promotions or otherwise. Therefore, in other words, the inferior judicial officers will be under a debt of gratitude and under obligations to the officers above them in the matter of recommendation for promotion or even for appointment. This is a fact. If it were otherwise, there would have been greater strength in my argument. But that does not matter. The result is, human nature being what it is—and the Advocate-General himself says that in our land there are so many cries—when a Judge of the High Court goes and practises before Munsiff whom he has appointed and whose judgment he has sat in judgment upon, necessarily the Munsiff would rather feel shy. That feeling of inferiority complex, to borrow the words of one clever advocate, subconscious complex, will certainly remain there. Therefore, Sir, to make it clearer I elaborate this point. If a High Court Judge comes and practises before a Munsiff and gets a judgment in his favour, necessarily the other party will say that because a High Court Judge came, he got a judgment in his favour. President Taft, a renowned President of the United States of America, was an eminent lawyer before he became the President of the United States of America. His

riends asked him to go and practice. He refused to practice because he thought he will be putting the Judges, many of whom he had appointed in delicate situations. That is the honourable thing to do.

Secondly, when Judges are about to retire—you ask any legal practitioner here—they try to get the favour of prominent advocates there, because they want to get senior briefs. They also want to get into the favour of powerful people in the land who might be of use to them in their life after retirement. That is another powerful reason why no Judge should be allowed to practise after retirement. Thirdly, take the case of ministerial officers, bench clerks, etc. If A goes to the bench clerk and asks for a particular help, he may not render any help. But if his ex-Judge goes and asks for help, he readily gives it. You find that the Bar is over-crowded today and the youngsters are suffering on account of the undue competition of the high luminaries of the judiciary. For these reasons, I place this proposition before the House for its acceptance.

Mr. A. V. Moothedan (Chalakkudi): Some change may be made in the object of the cut motion. The words "except the Advocate-General and Government Pleader" may be omitted. Otherwise it would be meaningless.

Mr. V. J. Mathai (Planters): I accept.

Mr. P. Kumaran Ezhuthassan (Vadakkancheri): This is a proposition which had come into this House in another form, when the question of prohibiting Hon'ble Judges of the High Court from practising after retirement was considered. When that came up for consideration in this House and member after member in illuminating speeches quoting as and better than the Hon'ble Member for Planters, made out a case that the Government should accept that position, a surprise of surprises was given to us by the then Advocate General who is now adorning our High Court. He said that orders have already been passed that the Judges of our High Court after retirement shall not practise. I ask the Government whether that promise made from a responsible place is honoured. That is the question. If not honoured, do please see that at least as far as our High Court is concerned, that this wholesome principle be accepted. What is it that you see, Sir, in some places. At Trichur you have, I believe two retired Munsiffs practising in the courts. I have seen in the High Court when at times I step in there just to have a look at the Highest tribunal of the land, some of our retired Judges pleading before the very seats they had a short time back vacated. With due respect to them, to their erudition, to their riches, I have seen some of them sitting from the morning till the evening. Is that a good spectacle for a citizen of the State to see, that is the serious question that I put to you. Argument is not necessary. Practice of other lands is not necessary for beautiful and enlightened Cochin to follow. It is always in the lead and it takes pride that it takes the lead in all matters. We are living in a period, Sir, in which if this proposition cannot be accepted today, it will never be accepted because our slogan had been that when a good proposition is mooted, to say that it is not so in Travancore, it is not so in British India. Now that I have been never an imitator even in that low way. Imitating as we do Travancore and British India in very many other respects in this good thing, do imitate, Travancore, do imitate British India. That is the prayer, and have the glory for yourself.

Mr. Joseph Pettah (Adur): Will, the Hon'ble mover of this cut motion have any objection in considering also the question of the service of these people. No, they have to retire at 55. Is it the case that they can be in service till 60?

Mr. V. J. Mathai (Planters): I can accept anything to get this passed.

മിസ്റ്റർ കെ. എസ്സ്. പണിക്കർ: എനിക്ക് ഒരു കേസുണ്ട്. അവിടെ ക്കൊ പാറ വക്കീലന്മാരും, ക്കൊ സ്ത്രീയായ ഒരു വക്കീലന്മാരും ഹൈക്കോടതി ജഡ്ജിയായിരുന്ന റിട്ട യർ ചെയ്ത ഒരു നല്ല വക്കീലുമാണ്. ആ കേസ് വളരെ ഗൗരവമുള്ള ഒന്നാണ്. ഈ ഉപ ക്ഷേപം പാസായാൽ എനിക്ക് അദ്ദേഹത്തെക്കൊണ്ടോ നല്ല വക്കീലിനെക്കൊണ്ടോ കേസു നടത്തിക്കാൻ സാധിക്കാതെ വരുമോ എന്നുള്ള വിവരം അറിഞ്ഞിട്ടുവേണം ഇതിനെ അനു കൂലിക്കാണോ എത്രക്കാണോ എന്ന് നിശ്ചയിക്കുവാൻ.

സഭാംഗങ്ങൾ: ഇതു പാസായാൽ സാധിക്കയില്ല.

Mr. M. Sivarama Menon (Advocate-General): This question has been considered by Government twice before. On the latter occasion when this question was considered enquiries were conducted and objections were raised of those persons who would be affected by a possible

enforcement of this rule. It was then pointed out to Government that if they had known that such a condition would be imposed they would have considered whether it would have been in their interests or not to accept the appointment. You will find that the age limit in Cochin is 55. In British India a Judge of the High Court can be in service till 60, in England even for life. Formerly I understand that the rule in Travancore is that a retired Judge of a Court cannot practise in that Court where he has been presiding continuously for 3 years. That is the only rule in Travancore. An advocate recruited as a Judge of High Court in his 52nd or 53rd year is not entitled to any pension which would enable him to earn his livelihood. How could you debar him from practising after retirement?

Mr. A. V. Moothedan (Chalakkudi): According to the rules, 5 years service at the Bar can be taken into account.

Mr. M. Sivarama Menon (Advocate-General): The cut motion is not confined to the Judge of a High Court. Suppose a senior member of the Bar is appointed as a District Judge in his 53rd year. If a person who has not got sufficient means of earning his livelihood after retirement and who has been unable to enter into service early in life is tabooed from practising that may be an injustice so far as he is concerned. Therefore we cannot lay down a general rule. For instance I would say this. We know the late lamented Mr. V. D. Ouseph. He had a very big family. Suppose that rule was in force. It would have been very great hardship to him. He had to go to Court and practise for his livelihood. With regard to a person who enters service early in life he has been able to earn a pension and the pension will enable him to live a life of his own status. Therefore we have to consider all these aspects and several ways and means have to be devised. It is perfectly true to say that the person who has been presiding for a reasonable period should not be allowed to come and practise before that Court. That restriction adopted in Travancore does not do as much injustice as tabooing the practice in any court. During the time of Mr. Herbert also this question was considered and later on account of these difficulties, Government dropped the question. It has again come up before this House. At any rate for the present if you lay down a hard and fast rule it may be hard.

Rama Varmha Tampuran (Secretary to Government): One word about what the Hon'ble Member for Vadakkancheri mentioned. This question was first raised in 1931 and the Government agreed that something on the lines suggested now and as also suggested then might be done. Of course the Diwan then was Mr. Herbert and we almost definitely decided to issue a rule to that effect but even before Mr. Herbert left the State he himself raised the question and wanted it to be investigated further. He sent a note to the office about the subject and on further consideration it was found that in none of the more progressive Indian States, Travancore, Baroda, or Mysore, such a practice existed. In Travancore, Baroda and Mysore, they are allowed to practise and it was on the definite information that we got that the question was dropped. So there has been no inconsistency in the position taken by the Government then or now, and the question was revised. It was done by the very same Diwan who first thought that there was a prima facie case to introduce such a rule. Of course by the time final orders were passed on the reference of Mr. Herbert, he left.

Mr. P. Kumaran Ezhuthassan (Vadakkancheri): When was it?

Rama Varmha Tampuran (Secretary to Government): On 6th April 1935. Mr. Herbert made a reference to the office. This was considered once and *prima facie* Government thought that there was a case. Later on the then Diwan made a further reference to the office for reinvestigation. The three Indian States were referred to and it was found that in none of those States such a rule existed and the whole position was dropped.

The demand of Rs. 2,22,898 under 17

Law and Justice put and carried

- The Demand of Rs. 13,076 under 11. Law and Justice, Cranganur, put and carried.
- The Demand of Rs. 1,13,800 under 18. Jails, put and carried.
- The Demand of Rs. 2,129 under 12. Jails, Cranganur put and carried.
- The Demand of Rs. 3,58,054 under 19. Police, put and carried.
- The Demand of Rs. 9,306 under 13. Police, Cranganur, put and carried.
- The Demand of Rs. 1,93,749 under 2. Agriculture, put and carried.
- The Demand of Rs. 75 under 2. Agriculture, Cranganur, put and carried.
- The Demand of Rs. 18,826 under 31. Scientific, etc., Departments, put and carried.

- The Demand of Rs. 18,367 under 32. Industries—Reserved, put and carried.
 The Demand of Rs. 1,07,563 under 33. Industries—Transferred, put and carried.
 The Demand of Rs. 2,239 under 22. Industries—Cranganur, put and carried.
 The Demand of Rs. 27,949 under 5. Co-operative Societies, put and carried.
 The Demand of Rs. 2,641 under 9. Matches, put and carried.
 The Demand of Rs. 2,89,575 under 8. Excise, put and carried.
 The Demand of Rs. 3,551 under 6. Excise—Cranganur, put and carried.
 The Demand of Rs. 1,11,503 under 13. Registration, put and carried.
 The Demand of Rs. 3,899 under 8. Registration—Cranganur, put and carried.
 The Demand of Rs. 56,699 under 10. Stamps, put and carried.
 The Demand of Rs. 543 under 7. Stamps—Cranganur, put and carried.
 The Demand of Rs. 1,05,760 under 14. Anchal, put and carried.
 The Demand of Rs. 2,730 under 9. Anchal—Cranganur, put and carried.
 The Demand of Rs. 86,197 under 36. Uplift of the Depressed Classes, put and carried.
 The Demand of Rs. 3,700 under 24. Uplift of the Depressed Classes—Cranganur, put and carried.
 The Demand of Rs. 76,818 under 16. Account and Finance, put and carried.
 The Demand of Rs. 31,704 under 38. Income-tax, put and carried.
 The Demand of Rs. 1,300 under 25. Income-tax—Cranganur, put and carried.
 The Demand of Rs. 1,83,156 under 27. Stationery and Printing, put and carried.
 The Demand of Rs. 1,500 under 23. Stationery, Cranganur, put and carried.

The House rose for the day at 5-10 p.m.

N. S. RADHAKRISHNA SARMA

Secretary to the Council